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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/45UH/LSC/2017/0050**

Property : **122A Becket Road Worthing West
Sussex BN14 7ET**

Applicant : **Mrs A Costin**

**Applicant's
Representative** : **In person**

Respondent : **Mr W Heselton**

**Respondent's
Representative** : **Mrs Heselton**

Type of Application : **Section 27A Landlord and Tenant
Act 1985**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mr B H R Simms FRICS**

**Date and venue of
hearing** : **01 September 2017
Havant Justice Centre**

Date of Decision : **21 September 2017**

DECISION AND ORDER

- 1 The Tribunal declares that the Respondent is not entitled to require the Applicant to pay any charges whatsoever in respect of management fees or the costs of the Tribunal hearing because the lease under which the Applicant holds the property contains no provisions allowing such charges to be made.

- 2 The Tribunal makes no order under s20 C of the Landlord and Tenant Act 1985 because there are no provisions in the lease to which the section might apply.
- 3 The Respondent is ordered to repay to the Applicant the sum of £300 representing the amount paid by her to the Tribunal in respect of her application and hearing fees. This sum must be paid directly to the Applicant by cheque or direct credit transfer within 21 days of the date of this order.

REASONS

1 The Applicant is the tenant of the property situate and known as 122A Becket Road Worthing West Sussex BN 14 7 ET (the property) and the Respondent is the landlord of the property.

2 The Applicant issued two conjoined applications in the Tribunal on 11 May 2017 asking the Tribunal to make a declaration under s27A Landlord and Tenant Act 1985 and Schedule 11 Commonhold and Leasehold Reform Act 2002 as to the reasonableness or otherwise of the Respondent landlord's charge for correspondence and administration charges for the years 2011 to 2016 inclusive.

3 Directions were issued by the Tribunal on 6 June and 13 July 2017.

4 The matter came before a Tribunal on 1 September 2017 where the Applicant represented herself and the Respondent was represented by Mrs Heselton.

5 The Applicant's claim is based on s27 Landlord and Tenant Act 1985 and Schedule 11 Commonhold and Leasehold Reform Act 2002, relating to the payability of and reasonableness of service and administration charges as between landlord and tenant. Such matters fall within the jurisdiction of the Tribunal.

6 The Tribunal inspected the exterior of the property in the presence of the Applicant on the morning of the hearing before the hearing commenced. There are no interior common parts and the interior of the property was not relevant to the issues before the Tribunal.

7 The property is a residential flat occupying the upper floor of a two storey building, the lower floor comprising commercial premises. A further commercial unit occupies a separate building to the rear of a common yard, the latter providing direct access to Becket Road. The building of which the property forms part is of conventional brick and tile construction, presently painted bright yellow. It appeared to be in good condition and displayed evidence of recent repairs renovations and repainting. The property is situated in the middle of a narrow street containing small terraced houses of early twentieth century construction. It backs on to a railway line with West Worthing station close by together with a range of local shops and amenities. On street parking is permitted in the area but spaces may be scarce.

8 The Applicant's application only asked the Tribunal to deal with the charges she had been asked to pay (and had paid) to the Respondent in respect of correspondence and administration. She did not ask the Tribunal to deal with any other aspects of service charges or insurance premium payments.

9 The Respondent acknowledged that the lease under which the Applicant holds the property contains no provisions for the payment of service charge or administration charges other than an annual contribution of £275 which the Applicant has always paid. Neither does it contain any clause allowing for the recovery of service or administration/management charges from the tenant. It follows therefore that the Applicant cannot be liable for any such charges and she will be entitled to recover sums paid by her for correspondence charges or administration charges. The Tribunal understands that this sum currently amounts to £1,050.00 wrongly charged to her by the Respondent between the years 2011 and 2016.

10 The Tribunal does not have jurisdiction under the present application to deal with any issues relating to the payment by the Applicant of sums in respect of service charges for repairs or contributions towards insurance premiums. The Applicant may have the right to make separate applications to the Tribunal in respect of these sums.

11 Having read the lease the Tribunal was concerned that it appeared to be defective in a number of respects. The lease referred to two plans but only one was present in the original lease. Provisions relating to repairs, service charges and insurance were unsatisfactory or lacking altogether and some clauses were ambiguous and unclear in their meaning. Both parties were advised to seek legal advice to clarify the terms of their relationship.

12 On its own motion the Tribunal determined that the Respondent should be required to refund to the Applicant the sum of £300 representing the sums paid by her in respect of her tribunal application and hearing fees.

13 **The Law**

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the

tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or

- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

Judge F J Silverman as Chairman
Date 21 September 2017

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking